

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGARET T.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY.

Defendant.

Case No. C20-5340 RAJ

ORDER AFFIRMING DENIAL OF BENEFITS

Plaintiff seeks review of the denial of her applications for Supplemental Security

Income (“SSI”) and Disability Insurance (“DI”) Benefits. Plaintiff contends the

Administrative Law Judge (“ALJ”) erred at step two by finding she did not have a severe impairment of migraines. Dkt. 19, p. 1. As discussed below, the Court **AFFIRMS** the Commissioner’s final decision and **DISMISSES** the case with prejudice.

ORDER AFFIRMING DENIAL OF BENEFITS

1 BACKGROUND

2 Plaintiff is 51 years old, has a limited education, and has worked as a
3 housekeeping cleaner, and kitchen helper. Admin. Record (“AR”) 47–48, 102, 117.
4 Plaintiff applied for DI benefits in September 2017 and SSI benefits in April 2018,
5 alleging disability as of June 1, 2006, later amended to October 28, 2016. AR 34, 72–73,
6 204–14. Plaintiff’s applications were denied initially and on reconsideration. AR 117–
7 23, 125–31. ALJ Larry Kennedy held a hearing on November 29, 2018, after which he
8 issued a decision finding Plaintiff not disabled. AR 34–49, 65–115. In relevant part,
9 ALJ Kennedy found Plaintiff had severe impairments of headaches, among other things.
10 AR 37. The ALJ found Plaintiff had the residual functional capacity (“RFC”) to perform
11 light work with additional physical and cognitive restrictions. AR 40. The ALJ found
12 Plaintiff was capable of performing past relevant work as a housekeeping cleaner, as that
13 did not require performance of work precluded by the RFC. AR 47.
14

15 The Appeals Council denied review, making the ALJ’s decision the
16 Commissioner’s final decision. AR 1–4.

17 DISCUSSION

18 Plaintiff alleges the ALJ erred by failing to find migraines a severe impairment.
19 Dkt. 19, pp. 2–5. Plaintiff is wrong. The ALJ found headaches to be a severe
20 impairment, which the Commissioner confoundingly did not note in his response brief.
21 AR 37. Plaintiff makes no argument suggesting the headaches to which the ALJ referred
22 are somehow distinct from migraines. *See* Dkt. 19. Plaintiff has failed to allege an actual
23

1 error. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012) (citing *Shinseki v.*
2 *Sanders*, 556 U.S. 396, 407–09 (2009)) (holding that the party challenging an
3 administrative decision bears the burden of proving harmful error).

4 Plaintiff has further failed to show any limitations from her headaches that were
5 established by the accepted medical evidence which the ALJ failed to include in the RFC.
6 An error is harmless at step two when the ALJ finds at least one severe impairment, and
7 includes in the RFC all limitations established by the evidence. *See Buck v. Berryhill*,
8 869 F.3d 1040, 1048–49 (9th Cir. 2017). The only evidence Plaintiff points to as
9 establishing limitations is a statement she made on a headache questionnaire indicating
10 she had problems with concentration and sleep due to headaches. *See* Dkt. 19, p. 2; AR
11 264.
12

13 The ALJ rejected Plaintiff’s testimony regarding the severity of her headache
14 complaints. AR 43. Among other things, the ALJ noted Plaintiff had not consistently
15 taken her prescribed medications. *Id.*

16 Plaintiff has not explicitly challenged the ALJ’s rejection of her testimony. *See*
17 Dkt. 19. Even assuming the few arguments she made in her brief were meant to apply to
18 this issue, Plaintiff has failed to show the ALJ harmfully erred in rejecting her testimony.
19 The ALJ reasonably noted Plaintiff was not taking her prescribed medications. *See* AR
20 447, 579–80. Failure to follow a prescribed course of treatment is an acceptable basis on
21 which to reject a claimant’s testimony. *See Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir.
22 2007). Plaintiff has thus failed to show harmful error.
23

CONCLUSION

For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this case is **DISMISSED** with prejudice.

DATED this 4th day of December, 2020.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge